

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Business Savings Plan d/b/a)	IC No. 02-S77206
Universal Broadband Communications, Inc.)	02-S77210
)	02-S80666
Complaints Regarding)	02-S81218
Unauthorized Change of)	03-S83161
Subscriber's Telecommunications Carrier)	
)	

ORDER

Adopted: May 19, 2002

Released: May 21, 2002

By the Acting Deputy Chief, Policy Division, Consumer & Governmental Affairs Bureau:

1. In this Order, we consider the complaints¹ alleging that Business Savings Plan d/b/a Universal Broadband Communications, Inc. (UBC) changed Complainants' telecommunications service providers without obtaining authorization and verification from Complainants in violation of the Commission's rules.² We conclude that UBC's actions did result in an unauthorized change in Complainants' telecommunications service providers and we grant Complainants' complaints.

2. In December 1998, the Commission released the *Section 258 Order* in which it adopted rules to implement Section 258 of the Communications Act of 1934 (Act), as amended by the Telecommunications Act of 1996 (1996 Act).³ Section 258 prohibits the practice of

¹ See Appendix A.

² See 47 C.F.R. §§ 64.1100 – 64.1190.

³ 47 U.S.C. § 258(a); Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996); *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Second Report and Order and Further Notice of Proposed Rule Making, 14 FCC Rcd 1508 (1998) (*Section 258 Order*), *stayed in part*, *MCI WorldCom v. FCC*, No. 99-1125 (D.C. Cir. May 18, 1999); First Order on Reconsideration, 15 FCC Rcd 8158 (2000); *stay lifted*, *MCI WorldCom v. FCC*, No. 99-1125 (D.C. Cir. June 27, 2000); Third Report and Order and Second Order on Reconsideration, 15 FCC Rcd 15996 (2000), Errata, DA No. 00-2163 (rel. Sept. 25, 2000), Erratum, DA No. 00-2192 (rel. Oct. 4, 2000), Order, FCC 01-67 (rel. Feb. 22, 2001); *reconsideration pending*. Prior to the adoption of Section 258, the Commission had taken various steps to address the slamming problem. See, e.g., *Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Report and Order, 10 FCC Rcd 9560 (1995), *stayed in part*, 11 FCC Rcd 856 (1995); *Policies and Rules Concerning Changing Long Distance Carriers*, CC Docket No. 91-64, 7 FCC Rcd 1038 (1992), *reconsideration denied*, 8 FCC Rcd 3215 (1993); Investigation of Access and Divestiture (continued....)

“slamming,” the submission or execution of an unauthorized change in a subscriber’s selection of a provider of telephone exchange service or telephone toll service.⁴ In the *Section 258 Order*, the Commission adopted aggressive new rules designed to take the profit out of slamming, broadened the scope of the slamming rules to encompass all carriers, and modified its existing requirements for the authorization and verification of preferred carrier changes. The rules require, among other things, that a carrier receive individual subscriber consent before a carrier change may occur.⁵ Pursuant to Section 258, carriers are absolutely barred from changing a customer's preferred local or long distance carrier without first complying with one of the Commission's verification procedures.⁶ Specifically, a carrier must: (1) obtain the subscriber's written or electronically signed authorization in a format that meets the requirements of Section 64.1130 authorization; (2) obtain confirmation from the subscriber via a toll-free number provided exclusively for the purpose of confirming orders electronically; or (3) utilize an independent third party to verify the subscriber's order.⁷

3. The Commission also has adopted liability rules. These rules require the carrier to absolve the subscriber where the subscriber has not paid his or her bill. In that context, if the subscriber has not already paid charges to the unauthorized carrier, the subscriber is absolved of liability for charges imposed by the unauthorized carrier for service provided during the first 30 days after the unauthorized change.⁸ Where the subscriber has paid charges to the unauthorized carrier, the Commission’s rules require that the unauthorized carrier pay 150% of those charges to the authorized carrier, and the authorized carrier shall refund or credit to the subscriber 50% of all charges paid by the subscriber to the unauthorized carrier.⁹ Carriers should note that our actions in this Order do not preclude the Commission from taking action, if warranted, pursuant to section 503 of the Act.¹⁰

4. We received Complainants’ complaints alleging that Complainants’ telecommunications service providers had been changed from their authorized carriers to UBC

Related Tariffs, CC Docket No. 83-1145, Phase I, 101 F.C.C.2d 911, 101 F.C.C.2d 935, *reconsideration denied*, 102 F.C.C.2d 503 (1985).

⁴ 47 U.S.C. § 258(a).

⁵ See 47 C.F.R. § 64.1120(b).

⁶ 47 U.S.C. § 258(a).

⁷ See 47 C.F.R. § 64.1120(c). Section 64.1130 details the requirements for letter of agency form and content for written or electronically signed authorizations. 47 C.F.R. § 64.1130.

⁸ See 47 C.F.R. §§ 64.1140, 64.1160. Any charges imposed by the unauthorized carrier on the subscriber for service provided after this 30-day period shall be paid by the subscriber to the authorized carrier at the rates the subscriber was paying to the authorized carrier at the time of the unauthorized change. *Id.*

⁹ See 47 C.F.R. §§ 64.1140, 64.1170.

¹⁰ See 47 U.S.C. § 503.

without Complainants' authorization. Pursuant to Sections 1.719 and 64.1150 of our rules,¹¹ we notified UBC of the complaints and UBC responded.¹² UBC states that Complainants' telephone numbers were purchased from another company and therefore, they did not use a letter of agency. Our rules allow a telecommunications provider to acquire all or part of another carrier's subscriber base without obtaining each subscriber's authorization and verification provided that the acquiring carrier comply with our streamlined procedures.¹³ To comply with these procedures, the acquiring carrier must file with the Commission's Office of Secretary, no later than 30 days before the planned transfer, a letter notification in CC Docket 00-257, including all the requirements listed in Section 64.1120 (e)(1) of our rules.¹⁴ UBC, however, did not file this letter notification with the Commission as required by our rules.¹⁵ We find that UBC has failed to produce clear and convincing evidence that Complainants authorized a carrier change.¹⁶ Therefore, we find that UBC's actions resulted in an unauthorized change in Complainants' telecommunications service providers and we discuss UBC's liability below.¹⁷

5. Pursuant to Section 64.1170(b) our rules, UBC must forward to the relevant authorized carriers an amount equal to 150% of all charges paid by the relevant subscriber to UBC.¹⁸ UBC must forward to the relevant authorized carriers the amounts, along with copies of any telephone bills issued from UBC to the Complainants.¹⁹ Within ten days of receipt of this amount, the relevant authorized carriers shall provide a refund or credit to the relevant Complainants in the amount of 50% of all charges paid by the relevant Complainants to UBC. Complainants have the option of asking the authorized carriers to re-rate UBC's charges based on the authorized carrier's rates and, on behalf of Complainants, seek from UBC, any re-rated amount exceeding 50% of all charges paid by Complainants to UBC. The authorized carriers must also send a notice to the Commission, referencing this Order, stating that it has given a refund or credit to the relevant Complainants.²⁰ If the authorized carriers have not received the

¹¹ 47 C.F.R. § 1.719 (Commission procedure for informal complaints filed pursuant to Section 258 of the Act); 47 C.F.R. § 64.1150 (procedures for resolution of unauthorized changes in preferred carrier).

¹² See Appendix A.

¹³ See 47 C.F.R. §§ 64.1120(e).

¹⁴ See 64.1120 (e)(1).

¹⁵ See 47 C.F.R. §§ 64.1150(d).

¹⁶ See 47 C.F.R. § 64.1150(d).

¹⁷ If Complainant is unsatisfied with See 47 C.F.R. § 1.719 the resolution of this complaint, Complainant may file a formal complaint with the Commission pursuant to Section 1.721 of the Commission's rules, 47 C.F.R. § 1.721. Such filing will be deemed to relate back to the filing date of Complainant's informal complaint so long as the formal complaint is filed within 45 days from the date this order is mailed or delivered electronically to Complainant. See 47 C.F.R. § 1.719.

¹⁸ 47 C.F.R. § 64.1170(b).

¹⁹ *Id.*

²⁰ See 47 C.F.R. § 64.1170(c).

reimbursement required from UBC within 45 days of the release of this Order, the authorized carriers must notify the Commission and Complainants accordingly. The authorized carriers also must notify the Complainants of his or her right to pursue a claim against UBC for a refund of all charges paid to UBC.²¹

6. Accordingly, IT IS ORDERED that, pursuant to Section 258 of the Communications Act of 1934, as amended, 47 U.S.C. § 258, and Sections 0.141, 0.361 and 1.719 of the Commission's rules, 47 C.F.R. §§ 0.141, 0.361, 1.719, the complaints filed by Complainants²² against UBC ARE GRANTED.

7. IT IS FURTHER ORDERED that, pursuant to Section 64.1170(d) of the Commission's rules, 47 C.F.R. § 64.1170(d), Complainants are entitled to absolution for the charges incurred during the first thirty days after the unauthorized change occurred to each Complainant and neither the authorized carrier nor UBC may pursue any collection against Complainants for those charges.

8. IT IS FURTHER ORDERED that this Order is effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Nancy A. Stevenson, Acting Deputy Chief
Policy Division
Consumer & Governmental Affairs Bureau

²¹ See 47 C.F.R. § 64.1170(e).

²² See Appendix A.

APPENDIX A

<u>INFORMAL COMPLAINT NUMBER</u>	<u>DATE OF COMPLAINT</u>	<u>DATE OF CARRIER RESPONSE</u>	<u>NAME OF AUTHORIZED CARRIER</u>
02-S77206	June 18, 2002	September 19, 2002	AT&T Corp
02-S77210	June 27, 2002	September 19, 2002	Covista
02-S80666	September 17, 2002	November 7, 2002	AT&T Corp.
02-S81218	October 1, 2002	November 26, 2002	AT&T Corp.
03-S83161	March 21, 2003	April 30, 2003	WorldCom